

# Notice of Allowability

Application No.

09/900,963

Examiner

Zachariah Lucas

Applicant(s)

GUERIN-MARCHAND ET AL.

Art Unit

1648

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the interview of September 20, 2007.
2. ☒ The allowed claim(s) is/are 31-33 and 37.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date 8/21/07
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date 9/20/07
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

Art Unit: 1648

### **DETAILED ACTION**

1. Claims 28-41 are pending in the application.
2. In the prior action, mailed on June 19, 2007, claims 28-38 were pending in the application; with claims 28-30, 34, and 36 withdrawn from consideration; and claims 31-33, 35, 37, and 38 under consideration and rejected.

In the Response of January 16, 2006, claims 31-33, and 37 were amended; and claims 39-41 were added.

3. Claims 31, 32, 33, and 37 are allowed.

### **EXAMINER'S AMENDMENT**

4. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Joseph R. Baker on September 20, 2007.

The application has been amended as follows:

The specification has been amended to insert the following paragraph below the title on page 1.

Art Unit: 1648

- - This application is a divisional of U.S. application 08/098,327, filed on November 24, 1993, now U.S. Patent 6,270,771, which is a 371 of PCT/FR92/00104, filed on February 5, 1992.- -

Claims 28-30, 34-36, and 38-41 have been cancelled from the application.

Claims 31-33, and 37 have been amended to read as follows:

- - 31. An isolated DNA encoding a polypeptide comprising SEQ ID NO: 38.- -
- - 32. An isolated DNA encoding a polypeptide comprising residues 1-153 of SEQ ID NO: 38.- -
- - 33. The isolated DNA according to claim 31, wherein said polypeptide is preceded by a peptide comprising SEQ ID NO: 2, wherein X<sub>1</sub> is Ser; X<sub>2</sub> is Glu; X<sub>3</sub> is Arg and X<sub>4</sub> is Glu.- -
- - 37. The isolated DNA encoding a polypeptide according to claim 32, wherein said polypeptide is fused to one or more peptides.- -

The amendments are made to the claims are to clarify the scope of the claims.

#### ***Information Disclosure Statement***

5. The information disclosure statement (IDS) submitted on August 21, 2007, is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the examiner.

Art Unit: 1648

The Rzepczyk et al. reference has been considered only to the extent of the abstract submitted by the Applicant.

### *Specification*

6. **(Prior Objection- Withdrawn)** The specification was previously objected to on the basis that Figures 1 and 3 comprise new matter based on the amendment submitted on September 2006. In view of submission of the amended drawings, the objection is withdrawn.

7. **(Prior Objection- Withdrawn)** It was requested that the Applicant amend the application to insert the heading "Brief Description of the Drawings" on page 4, line 8 of the specification. In view of the amendment to the specification, the objection is withdrawn.

### *Claim Objections*

8. **(Prior Objection- Withdrawn)** Claims 31, 32, and 33 are objected to because of the following informalities: the parenthesis around the sequence identification numbers should be deleted. In view of the amendments to the claims, the objection is withdrawn.

### *Claim Rejections - 35 USC § 112*

9. **(Prior Rejection- Withdrawn)** Claims 31-33 and 37 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention because it is not clear what the use of the parenthetical marks around the sequence identifiers is intended to indicate. In view of the amendments to the claims, the rejection is withdrawn.

Art Unit: 1648

10. **(Prior Rejection- Withdrawn)** Claims 32, 35, 37, and 38 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement with respect to claim language “an epitope portion thereof” of the first 153 residues of SEQ ID NO: 38. In view of the amendment of the claims to remove such language, the rejection is withdrawn.

***Claim Rejections - 35 USC § 102 and 103***

11. **(Prior Rejections- Withdrawn)** Claims 32 and 38 were rejected under 35 U.S.C. 102(b) as being anticipated by each of Guerin-Marchand et al. (Nature 329: 164-67- of record in the February 2002 IDS), by U.S. 5,602,031, and by WO 88/05785. In view of the amendment of claim 32 such that it is limited to polypeptides consisting of sequences with SEQ ID NO: 38, the rejections are withdrawn.

12. **(Prior Rejection- Withdrawn)** Claims 27, 32, and 37 were rejected under 35 U.S.C. 103(a) as being unpatentable over WO 88/05785, as applied against claims 27 and 32 above. This rejection is withdrawn on the same basis indicated with respect to the anticipation rejection over this reference above.

***Double Patenting***

13. **(Prior Rejections- Withdrawn)** Claims 32 and 38 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 2 of U.S. Patent No. 5,602,031. Claims 32, 37, and 38 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 2 of U.S. Patent No.

Art Unit: 1648

5,602,031 in view of Marchand et al., WO 88/05785. In view of the amendment of claim 32, the rejections are withdrawn.

### *Conclusion*

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zachariah Lucas whose telephone number is 571-272-0905. The examiner can normally be reached on Monday-Friday, 8 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Z. Lucas/  
Patent Examiner, AU 1648